



REQUEST FOR PROPOSALS

Trash Capture Device Maintenance Services

City of Dublin

Proposals must be received by: Friday, July 15, 2016 at 4:00 p.m. (Pacific Time)

Shannan Young, Environmental Coordinator
100 Civic Plaza
City of Dublin, CA 94568

Proposals will be evaluated on the following: a) Responsiveness to the Request for Proposals questions; b) Experience of the firm; c) Experience and qualifications of the assigned individuals; and d) Satisfaction of previous clients.



**Request for Proposal
For
Trash Capture Services**

Overview

The City of Dublin (City) is requesting proposals from qualified trash capture device installation and maintenance (contractor) businesses. The City intends to select a business to conduct the required installation and maintenance of full trash capture devices as mandated in the Municipal Regional Stormwater NPDES Permit. Full trash capture devices to be serviced include large vortex units and storm drain inlet filters. This is a prevailing wage contract.

Schedule for RFP Process

(Tentative dates, subject to change)

| | |
|---------------------------|---|
| Monday, June 27 | Request for Proposals posted to City website and emailed to contractors |
| Friday, July 1 | Deadline to submit questions to City of Dublin |
| Friday, July 8 | Addendum posted, if required |
| Friday, July 15 | Proposals are due no later than 4:00 PM on July 15 at the offices of the City of Dublin, Public Works Department, 100 Civic Plaza, Dublin, CA 94568. <u>Late submittals will not be accepted.</u> |
| Tuesday, August 16 | Professional Services Agreement scheduled for approval by the Dublin City Council. |

Scope of Work

Contractor to perform operations and maintenance services for REM Triton Bioflex Trash Guard (BFTG) Filters and for hydrodynamic separators located throughout the City. On occasion, the contractor may be asked to design, specify and install trash capture devices within the City.

Hydrodynamic Separators

Currently, there are seventeen (17) hydrodynamic separators (H/S unit) located throughout the City. There may be an additional seven (7) H/S units installed within the contract term. Operations and maintenance (O&M) service for the H/S units shall be performed a minimum of two times per year. O&M Service shall include but is not limited to the following:

- Visually inspect the H/S unit to determine if the system components are in working order and to verify that there are no blockages or obstructions in the inlet or separation screen.
- If the device is at or approaching 50% full, complete maintenance activities to remove sediment and debris. At least one complete maintenance service, including vacuuming and power-washing shall be completed annually. Power-washing liquid shall be disposed of properly.
- Remove and replace sorbent material, as applicable. Spent sorbent material shall be manifested and recycled at a Cal EPA approved processing facility.
- Remove and dispose of all captured debris and material in accordance with all applicable laws and regulations.

REM Triton Bioflex Trash Guard (BFTG) Filters

Currently, there are ninety (90) BFTG Filters installed in City right-of-way or property. A minimum of nine (9) filters will be installed within the contract term. O&M service for BFTG Filters shall be performed a minimum of three times per year. O&M service shall include but is not limited to the following:

- Vacuum and power-wash filters at each service visit. Power-washing liquid shall be disposed of properly.
- Inspect each BFTG filter for system operation.
- Replace and recharge BFTG filter media as necessary.
- Attach a bright yellow dated service lock-out tag to each storm drain inlet after the maintenance is completed.
- Remove and dispose of all captured debris and material in accordance with all applicable laws and regulations.
- Spent media (if applicable) shall be manifested and recycled at a Cal EPA approved processing facility.

Reporting

For each service event, a maintenance report shall be provided. The report shall include but is not limited to the following information:

- Service date
- Reference City of Dublin storm drain inlet or manhole ID#
- Detail services performed
- Specify storage capacity condition by indicating percent full
- Provide an estimated amount of debris removed from each unit in gallons or cubic feet
- Include trash characterization for trash removed (i.e. % trash and dominant types of trash)
- Report any special problems such as flooding, screen blinding or plugging from leaves, plastic bags, or other debris causing overflow, damage reducing function, or other negative conditions.

Reports shall be provided electronically. The City reserves the right to require maintenance information to be collected in a regional GIS database to be developed by the Clean Water Program. Reports shall be submitted within 15 days of service. If special problems are observed that could potentially cause or contribute to localized flooding, the City shall be contacted on the same day, if rain is imminent.

Installation

Periodically, the City may request that the Contractor design, specify and install full trash capture devices within the City. The cost per installation shall be determined on a case-by-case basis, as needed.

All work shall be based on prevailing wage scale. Traffic control shall be provided by the Contractor, as necessary.

Submission Process and General Conditions

1. Proposers shall submit three (3) original, unbound proposals printed double-sided and one read-only electronic copy to:

Shannan Young
Environmental Coordinator
100 Civic Plaza
Dublin, CA 94568
shannan.young@dublin.ca.gov

Electronic copies shall be emailed and hardcopies (3) must be mailed to the address listed above.

2. Deadline for submitting the proposal is Friday, July 15, 2016, at 4:00 p.m. to the Public Works Department at 100 Civic Plaza, Dublin, CA 94568. Postmarks will not be accepted.

3. The City will not pay for any costs incurred in preparation and submission of the proposals or in anticipation of a contract. The format of submittals is at the discretion of the Proposer. Each proposal shall be limited to a maximum of 6 pages using minimum 12 point font size.

Proposals

Proposals shall follow the following format:

1. Cover letter stating interest in providing services to the City of Dublin
2. Statement of Qualifications and Experience
3. Resumes or bio for staff assigned
4. References
5. Rate schedule for all job classifications related to this work
6. Proposed schedule for completing required O&M services
7. DIR Registration Number

Contractor Qualifications and Experience

Contractor must be qualified and licensed, as necessary, to provide complete installation and maintenance services on a variety of full trash capture devices. Contractor is required to obtain a City of Dublin Business License. All contractors must be registered with the Department of Industrial Relations.

References

Contractor must include three (3) references for which the company has provided services similar to those described in this RFP. Reference information shall include: Name, Address, Contact, Title, Phone Number, and Term of the Contract.

Quotes/Pricing

Quotes shall be based on a fixed rate for each service. Rates will remain effective for the term of the contract. Contractor shall provide a budget proposal for all services required as well as a rate schedule for each task.

Equal Employment Opportunity

Proposer shall not, on the grounds of race, color, sex, age, religion, national origin, ancestry, physical handicap, medical condition, or marital status either discriminate or permit discrimination against any employee or applicant for employment in any manner prohibited by Federal, State or local laws. In the event of Proposer non-compliance, the City of Dublin may cancel, terminate or suspend the Contract in whole or in part. Proposer may also be declared ineligible for further contracts with the City of Dublin.

Proposer shall take affirmative action to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Proposer and its sub-consultants shall post in conspicuous places, available to all employees and applicants for employment, a notice setting forth the following provisions [29 U.S.C. § 623, 42 U.S.C. § 2000, 42 U.S.C. § 6102, 42 U.S.C. § 12112, 42 U.S.C. § 12132, 49 U.S.C. § 5332, 29 CFR Part 1630, 41 CFR Parts 60 et seq.].

Governing Law

This RFP summarizes the applicable laws and governance; when in conflict applicable State/Federal guidelines shall apply. The contract and legal relations between the parties hereto shall be governed and construed in accordance with the laws of the State of California.

Review and Selection Process

The City intends to select a Contractor based on quality of proposal, work experience, references, and cost for services. The lowest price proposal will not necessarily be selected. The City reserves the right to select a Contractor based on its sole discretion. Each proposal will be evaluated based on the current needs of the City. The City reserves the right to reject any or all proposals, without penalty to the City. The City reserves the right to award a contract to the company the City feels best meets the requirements of the RFP.

Criteria to be considered during the evaluation are as follows:

1. Overall responsiveness to the proposal. Proposals shall be complete, address all aspects of the RFP, have a statement of qualifications, references and costs.
2. The contractor's qualifications and experience.
3. The contractor's technical capability, expertise and skill to provide the required services.
4. Review of the contractor's performance, and service history as determined by reference checks and/or the City's prior experience with the contractor.
5. Cost.

Agreement Form

It is anticipated that the services covered by the Agreement resulting from this solicitation will be performed on a time and materials fee basis for a specified scope of work. The term of the agreement will begin August 16, 2016 and expire on June 30, 2018. This Agreement may be extended for up to two additional years.

A sample of the Contract Services Agreement (Agreement) is provided as **Attachment 2**. If the proposer desires to take exception to the Agreement, Proposer shall clearly identify proposed changes to the Agreement and furnish the reason for these changes. Exceptions will be taken into consideration in evaluating the proposals. Otherwise, Proposer is to state in writing in the proposal that the Agreement is acceptable to Proposer.

City reserves the right to make revisions to the standard contract language prior to contract execution.

Insurance Requirements

The Contractor shall provide insurance coverage as follows in conformance with the City of Dublin's requirements:

| | |
|--------------------------------|-------------|
| General Liability Insurance | \$1,000,000 |
| Automobile Liability Insurance | \$1,000,000 |
| Workers Compensation Insurance | \$1,000,000 |

Attachment 2

Standard Consulting Services Agreement

CONTRACT SERVICES AGREEMENT BETWEEN

THE CITY OF DUBLIN AND

<<INSERT NAME OF CONTRACTOR>>

THIS AGREEMENT for contract services is made by and between the City of Dublin ("City") and _____ ("Contractor") as of _____, 20__.

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Contractor shall provide to City the services described in the Scope of Work attached as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

- 1.1 **Term of Services.** The term of this Agreement shall begin on the date first noted above and shall end on _____, the date of completion specified in Exhibit A, and Contractor shall complete the work described in Exhibit A prior to that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Contractor to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as provided for in Section 8. Notwithstanding the foregoing this Agreement may be extended on a month-to-month basis for up to 6 months upon the written consent of the Contractor and the City Manager, provided that; a) sufficient funds have been appropriated for such purpose, and b) the price charged by the Contractor for the provision of the services described in Exhibit A does not increase. None of the foregoing shall affect the City's right to terminate the Agreement, as provided for in Section 8.
- 1.2 **Standard of Performance.** Contractor shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Contractor is engaged in the geographical area in which Contractor practices its profession. Contractor shall prepare all work products required by this Agreement in a substantial, first-class manner and shall conform to the standards of quality normally observed by a person practicing in Contractor's profession.
- 1.3 **Assignment of Personnel.** Contractor shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Contractor shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.
- 1.4 **Time.** Contractor shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.1 above and to satisfy Contractor's obligations hereunder.

Section 2. COMPENSATION. City hereby agrees to pay Contractor a sum not to exceed _____, notwithstanding any contrary indications that may be contained in Contractor's proposal, for services to be performed under this Agreement. In the event of a conflict between this Agreement and Contractor's

proposal, attached as Exhibit A, regarding the amount of compensation, the Agreement shall prevail. City shall pay Contractor for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Contractor for services rendered pursuant to this Agreement. Contractor shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City, Contractor shall not bill City for duplicate services performed by more than one person.

Contractor and City acknowledge and agree that compensation paid by City to Contractor under this Agreement is based upon Contractor's costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Contractor. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Contractor and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

2.1 Invoices. Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information:

- Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
- The beginning and ending dates of the billing period;
- A copy of the applicable time entries or time sheets shall be submitted showing the following:
 - Daily logs of total hours worked by each individual performing work under this Contract
 - Hours must be logged in increments of tenths of an hour or quarter hours
 - If this Contract covers multiple projects, all hours must be logged by project assignment
 - A brief description of the work, and each reimbursable expense
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
- The Contractor's signature.

2.2 **Monthly Payment.** City shall make monthly payments, based on invoices received, for services satisfactorily performed. City shall have 30 days from the receipt of an invoice that complies with all of the requirements above to pay Contractor.

2.3 **[INTENTIONALLY DELETED]**

2.4 **Total Payment.** City shall pay for the services to be rendered by Contractor pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Contractor in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.

In no event shall Contractor submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment.

- 2.4 **Hourly Fees.** Fees for work performed by Contractor on an hourly basis shall not exceed the amounts shown on the following fee schedule: Exhibit B
- 2.5 **Reimbursable Expenses.** Contractor shall not be eligible for reimbursement expenses.
- 2.6 **Payment of Taxes.** Contractor is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.
- 2.7 **Payment upon Termination.** In the event that the City or Contractor terminates this Agreement pursuant to Section 8, the City shall compensate the Contractor for all outstanding costs incurred for work satisfactorily completed as of the date of written notice of termination. Contractor shall maintain adequate logs and timesheets in order to verify costs incurred to that date.
- 2.8 **Authorization to Perform Services.** The Contractor is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator.

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Contractor shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City shall make available to Contractor only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

In no event shall City be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, long-distance telephone or other communication charges, vehicles, and reproduction facilities.

Section 4. INSURANCE REQUIREMENTS. Before beginning any work under this Agreement, Contractor, at its own cost and expense, shall procure "occurrence coverage" insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Contractor and its agents, representatives, employees, and subcontractors. Contractor shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects to the City. Contractor shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the Contractor's bid. Contractor shall not allow any subcontractor to commence work on any subcontract until Contractor has obtained all insurance required herein for the subcontractor(s) and provided evidence thereof to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution.

It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to City as an additional insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured; whichever is greater. The additional insured coverage under the Contractor's policy shall be "primary and non-contributory" and will not seek contribution from City's insurance or self-insurance and shall be at least as broad as CG 20 01 04 12. In the event Contractor fails to maintain coverage as required by this Agreement, City at its sole discretion may purchase the coverage required and the cost will be paid

by Contractor. Failure to exercise this right shall not constitute a waiver of right to exercise later. Each insurance policy shall include an endorsement providing that it shall not be cancelled, changed, or allowed to lapse without at least thirty (30) days' prior written notice to City of such cancellation, change, or lapse.

- 4.1 Workers' Compensation.** Contractor shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Contractor. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident. In the alternative, Contractor may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the Contract Administrator. The insurer, if insurance is provided, or the Contractor, if a program of self-insurance is provided, shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

An endorsement shall state that coverage shall not be canceled except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City. Contractor shall notify City within 14 days of notification from Contractor's insurer if such coverage is suspended, voided or reduced in coverage or in limits.

4.2 Commercial General and Automobile Liability Insurance.

- 4.2.1 General requirements.** Contractor, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

- 4.2.2 Minimum scope of coverage.** Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 Code 1 ("any auto").

- 4.2.3 Additional requirements.** Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

- a. City and its officers, employees, agents, and volunteers shall be covered as additional insureds with respect to each of the following: liability arising out of

activities performed by or on behalf of Contractor, including the insured's general supervision of Contractor; products and completed operations of Contractor; premises owned, occupied, or used by Contractor; and automobiles owned, leased, or used by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to City or its officers, employees, agents, or volunteers.

- b. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- c. An endorsement must state that coverage is primary insurance with respect to the City and its officers, officials, employees and volunteers, and that no insurance or self-insurance maintained by the City shall be called upon to contribute to a loss under the coverage.
- d. Any failure of Contractor to comply with reporting provisions of the policy shall not affect coverage provided to City and its officers, employees, agents, and volunteers.
- e. An endorsement shall state that coverage shall not be canceled except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City. Contractor shall notify City within 14 days of notification from Contractor's insurer if such coverage is suspended, voided or reduced in coverage or in limits.
- f. The commercial general liability, automobile liability and pollution legal liability policies must contain a cross liability or severability of interest clause.

4.3 [RESERVED]

4.4 All Policies Requirements.

4.4.1 Acceptability of insurers. All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A:VII.

4.4.2 Verification of coverage. Prior to beginning any work under this Agreement, Contractor shall furnish City with certificates of insurance and with original endorsements effecting coverage required herein. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The City reserves the right to require complete, certified copies of all required insurance policies and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

4.4.3 Subcontractors. Contractor agrees to include with all subcontractors in their subcontract the same requirements and provisions of this Agreement including the Indemnification and Insurance requirements to the extent they apply to the scope of the Subcontractor's work. Subcontractors hired by Contractor agree to be bound to Contractor and the City in

the same manner and to the same extent as Contractor is bound to the City under the Contract Documents. Subcontractor further agrees to include these same provisions with any Sub-subcontractor. A copy of the Owner Contract Document Indemnity and Insurance provisions will be furnished to the Subcontractor upon request. The General Contractor shall require all subcontractors to provide a valid certificate of insurance and the required endorsements included in the agreement prior to commencement of any work and will provide proof of compliance to the City.

4.4.4 Variation. The City may approve a variation in the foregoing insurance requirements, upon a determination that the coverages, scope, limits, and forms of such insurance are either not commercially available, or that the City's interests are otherwise fully protected.

4.4.5 Deductibles and Self-Insured Retentions. All self-insured retentions (SIR) and/or deductibles must be disclosed to the City for approval and shall not reduce the limits of liability. Policies containing any self-insured retention provision and/or deductibles shall provide or be endorsed to provide that the SIR and/or deductibles may be satisfied by either the named insured or the City.

4.4.6 Excess Insurance. The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City (if agreed to in a written contract or agreement) before City's own insurance or self-insurance shall be called upon to protect City as a named insured.

4.4.7 Notice of Reduction in Coverage. In the event that any coverage required by this section is reduced, limited, or materially affected in any other manner, Contractor shall provide written notice to City at Contractor's earliest possible opportunity and in no case later than five days after Contractor is notified of the change in coverage.

4.5 Remedies. In addition to any other remedies City may have if Contractor fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Contractor's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Contractor to stop work under this Agreement or withhold any payment that becomes due to Contractor hereunder, or both stop work and withhold any payment, until Contractor demonstrates compliance with the requirements hereof; and/or
- Terminate this Agreement.

Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES. To the maximum extent allowed by law, Contractor shall indemnify, keep and save harmless the City, and City Councilmembers, officers, agents and employees against any and all suits, claims or actions arising out of any injury to persons or property, including death, that may occur, or that may be alleged to have occurred, in the course of the performance of this

Agreement by a negligent act or omission or wrongful misconduct of the Contractor or its employees, subcontractors or agents. Contractor further agrees to defend any and all such actions, suits or claims and pay all charges of attorneys and all other costs and expenses arising therefrom or incurred in connection therewith; and if any judgment be rendered against the City or any of the other individuals enumerated above in any such action, Contractor shall, at its expense, satisfy and discharge the same. Contractor's responsibility for such defense and indemnity obligations shall survive the termination or completion of this Agreement for the full period of time allowed by law. The defense and indemnification obligations of this Agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this Agreement.

In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Contractor shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Contractor/Subcontractor's responsibility for such defense and indemnity obligations shall survive the termination or completion of this Agreement for the full period of time allowed by law.

Section 6. STATUS OF CONTRACTOR.

- 6.1 Independent Contractor.** At all times during the term of this Agreement, Contractor shall be an independent contractor and shall not be an employee of City. City shall have the right to control Contractor only insofar as the results of Contractor's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3; however, otherwise City shall not have the right to control the means by which Contractor accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Contractor and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.
- 6.2 Contractor No Agent.** Except as City may specify in writing, Contractor shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Contractor shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

- 7.1 Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 Compliance with Applicable Laws.** Contractor and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.
- 7.3 Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Contractor and any subcontractors shall comply with

all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.

- 7.4 Licenses and Permits.** Contractor represents and warrants to City that Contractor and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Contractor represents and warrants to City that Contractor and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Contractor and any subcontractors shall obtain and maintain during the term of this Agreement valid Business Licenses from City.
- 7.5 Nondiscrimination and Equal Opportunity.** Contractor shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Contractor under this Agreement. Contractor shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Contractor thereby.

Contractor shall include the provisions of this Subsection in any subcontract approved by the Contract Administrator or this Agreement.

Section 8. **TERMINATION AND MODIFICATION.**

- 8.1** **Termination.** City may cancel this Agreement at any time and without cause upon written notification to Contractor.

Contractor may cancel this Agreement upon thirty (30) days' written notice to City and shall include in such notice the reasons for cancellation.

In the event of termination, Contractor shall be entitled to compensation for services performed to the effective date of termination; City, however, may condition payment of such compensation upon Contractor delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Contractor or prepared by or for Contractor or the City in connection with this Agreement.

- 8.2** **Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Contractor understands and agrees that, if City grants such an extension, City shall have no obligation to provide Contractor with compensation beyond the maximum amount provided for in this Agreement.

- 8.3** **Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.

- 8.4** **Assignment and Subcontracting.** City and Contractor recognize and agree that this Agreement contemplates personal performance by Contractor and is based upon a determination of Contractor's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Contractor. Contractor may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Contractor shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the Contract Administrator.

- 8.5** **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Contractor shall survive the termination of this Agreement.

- 8.6** **Options upon Breach by Contractor.** If Contractor materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, the following:

- 8.6.1** Immediately terminate the Agreement;
- 8.6.2** Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Contractor pursuant to this Agreement;
- 8.6.3** Retain a different contractor to complete the work described in Exhibit A not finished by Contractor; or

- 8.6.4 Charge Contractor the difference between the cost to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that City would have paid Contractor pursuant to Section 2 if Contractor had completed the work.

Section 9. KEEPING AND STATUS OF RECORDS.

- 9.1 **Records Created as Part of Contractor's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Contractor prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Contractor hereby agrees to deliver those documents to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. City and Contractor agree that, until final approval by City, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both parties.
- 9.2 **Contractor's Books and Records.** Contractor shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Contractor to this Agreement.
- 9.3 **Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires Contractor to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of three (3) years after final payment under the Agreement.

Section 10. MISCELLANEOUS PROVISIONS.

- 10.1 **Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2 **Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Alameda or in the United States District Court for the Northern District of California.
- 10.3 **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in

full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

- 10.4 **No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- 10.6 **Use of Recycled Products.** Contractor shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 10.7 **Conflict of Interest.** Contractor may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Contractor in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Contractor shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

Contractor hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If Contractor was an employee, agent, appointee, or official of the City in the previous twelve months, Contractor warrants that it did not participate in any manner in the forming of this Agreement. Contractor understands that, if this Agreement is made in violation of Government Code §1090 *et. seq.*, the entire Agreement is void and Contractor will not be entitled to any compensation for services performed pursuant to this Agreement, and Contractor will be required to reimburse the City for any sums paid to the Contractor. Contractor understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

- 10.8 **Solicitation.** Contractor agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.
- 10.9 **Contract Administration.** This Agreement shall be administered by the City Manager ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.

10.10 **Notices.** Any written notice to Contractor shall be sent to:

Insert Name of Business

Insert Name of Contact & Title

Insert Address

Insert Phone Number

Any written notice to City shall be sent to:

City of Dublin, Department of Public Works

Nancy McDonnell, Management Analyst II

100 Civic Plaza

Dublin, CA 94568

(925) 833-6630

10.11 **[RESERVED]**

10.12 **Integration.** This Agreement, including the scope of work attached hereto and incorporated herein as Exhibit A, represents the entire and integrated agreement between City and Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral.

CITY OF DUBLIN

CONTRACTOR

Christopher Foss,
City Manager

Insert Name,
Insert Title

Attest:

Caroline P. Soto, City Clerk

Approved as to Form:

John Bakker, City Attorney

EXHIBIT A

SCOPE OF SERVICES

Contractor to perform operations and maintenance services for REM Triton Bioflex Trash Guard (BFTG) Filters and for hydrodynamic separators located throughout the City. On occasion, the contractor may be asked to design, specify and install trash capture devices within the City.

Hydrodynamic Separators

Currently, there are seventeen (17) hydrodynamic separators (H/S unit) located throughout the City. There may be an additional seven (7) H/S units installed within the contract term. Operations and maintenance (O&M) service for the H/S units shall be performed a minimum of two times per year. O&M Service shall include but is not limited to the following:

- Visually inspect the H/S unit to determine if the system components are in working order and to verify that there are no blockages or obstructions in the inlet or separation screen.
- If the device is at or approaching 50% full, complete maintenance activities to remove sediment and debris. At least one complete maintenance service, including vacuuming and power-washing shall be completed annually. Power-washing liquid shall be disposed of properly.
- Remove and replace sorbent material, as applicable. Spent sorbent material shall be manifested and recycled at a Cal EPA approved processing facility.
- Remove and dispose of all captured debris and material in accordance with all applicable laws and regulations.

REM Triton Bioflex Trash Guard (BFTG) Filters

Currently, there are ninety (90) BFTG Filters installed in City right-of-way or property. A minimum of nine (9) filters will be installed within the contract term. O&M service for BFTG Filters shall be performed a minimum of three times per year. O&M service shall include but is not limited to the following:

- Vacuum and power-wash filters at each service visit. Power-washing liquid shall be disposed of properly.
- Inspect each BFTG filter for system operation.
- Replace and recharge BFTG filter media as necessary.
- Attach a bright yellow dated service lock-out tag to each storm drain inlet after the maintenance is completed.
- Remove and dispose of all captured debris and material in accordance with all applicable laws and regulations.
- Spent media (if applicable) shall be manifested and recycled at a Cal EPA approved processing facility.

EXHIBIT B

COMPENSATION SCHEDULE

Pursuant to California Labor Code section 1771.1, Consultant shall be registered with the Department of Industrial Relations.

Prevailing Wage

Pursuant to California Labor Code Section 1771, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Work is to be performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in the California Labor Code must be paid to all workers engaged in performing the Work. Pursuant to California Labor Code Section 1770 and following, the Director of Industrial Relations has determined the general prevailing wage per diem rates for the locality in which the Work is to be performed. Pursuant to California Labor Code Section 1773, the City has obtained the general prevailing rate of per diem wages and the general rate for holiday and overtime work in the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the project. Pursuant to California Labor Code Section 1773.2, copies of the prevailing rate of per diem wages are on file at the City Public Works Department and will be made available on request. Throughout the performance of the Work the Contractor must comply with all provisions of the Contract Documents and all applicable laws and regulations that apply to wages earned in performance of the Work.

The Contractor is subject to prevailing wage rate compliance monitoring and enforcement by the California Department of Industrial Relations. The contractor or subcontractor(s) shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to California Labor Code Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to California Labor Code Section 1725.5 at the time the contract is awarded.